

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS  
and DETERMINATION REPORT**

<b><i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i></b>	<b>Certificate Holder:</b>	Michael Bogle
	<b>Certification Number:</b>	20628
	<b>Business Name:</b>	East Valley Fiduciary Services, Inc.
	<b>Certification Number:</b>	20592
	<b>Type of Certificate/License:</b>	Individual Fiduciary, Business Entity
<b><i>COMPLAINANT</i></b>	<b>Name:</b>	Pam Byfield et al
<b><i>INVESTIGATION INFORMATION</i></b>	<b>Complaint Number:</b>	18-0007 through 18-0031
	<b>Investigator:</b>	Pasquale Fontana
<b>Complaint Received:</b>		May 1, 2018 - onward
<b>Complaint Forwarded to the Certificate Holder:</b>		May 2, 2018 - onward
<b>Certificate Holder/Licensee Received Complaint:</b>		On or about May 5, 2018 - onward
<b>Response From Certificate Holder:</b>		May 31, 2018 - onward
<b>Period of Active Certification/Licensure:</b>		East Valley Fiduciary Services, Inc. (November 8, 2007) November 12, 2009 (Michael Bogle)
<b>Status of Certification/License:</b>		Active
<b>Availability of Certificate Holder/Licensee:</b>		Available
<b>Availability of Complainant:</b>		Available
<b>Report Date:</b>		February 22, 2019

**ALLEGATIONS:**

1. Michael Bogle and East Valley Fiduciary Services, Inc. rejected the Revocation of Power of Attorney executed by his client and continued to act on his client's behalf.

**ADDITIONAL ALLEGATIONS:**

2. Michael Bogle and East Valley Fiduciary Services, Inc. filed a document with the court that contained misrepresentations or omissions of material facts, in violation of ACJA §7-202(J)(1)(c)(3).

**List of sources for obtaining information: (Investigative, records, outside resources, etc.):**

- Written complaint and documentation submitted by complainant, Pam Byfield ("Byfield") and other complainants;
- Written response and documentation submitted by certificate holder, Michael Bogle ("Bogle"), Owner and Designated Principal of East Valley Fiduciary Services, Inc. ("EVFS");
- Review of applicable Certification and Licensing Division ("Division") records;
- Review of applicable sections of Arizona Revised Statutes ("A.R.S."), Arizona Codes of Judicial Administration ("ACJA") § 7-201 and § 7-202, and Arizona Supreme Court Rules;
- Records obtained from Adult Protective Services ("APS");
- Records obtained from the security guard/security office, Brandon Fowers, ("Fowers") at Venture Out at Mesa, Inc.;
- The Arizona Court of Appeals case, Golleher v. Horton, 148 Ariz. 537, P.2d. 1225 (Ct. App. 1985);
- Audio recording provided by Karen Ashby ("Ashby").

**PERSONS INTERVIEWED:**

1. Pamela Byfield
2. Sharon Ellis
3. Karen Ashby
4. Mitzi Poff
5. Judith Lally
6. Brandon Fowers
7. Roberta Oldemar
8. Gordon Klofstad
9. Michael Bogle
10. Tanya Malos
11. Joyce Chancellor
12. Mine Tugba Ferrari
13. Stephanie Olson
14. Norman Silver

**SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:**

By way of background, Norman Silver ("Silver") is a resident of Colorado Springs, Colorado and for the past 18 (eighteen) years, approximately, he has been wintering in Arizona, residing at his property in adult community, Venture Out Mesa ("Venture Out").

On January 24, 2018, Silver executed certain powers of attorney documents including:

- Durable General Power of Attorney
- Health Care Power of Attorney including Mental Health Power of Attorney
- Health Insurance Portability and Accountability Act of 1996 (HIPAA) /HIPAA Release Authority.

Silver appointed EVFS as his agent under those Powers of Attorney.

On or about April 17, 2018, Bogle, for EVFS, acting as agent under the referenced powers of attorney, admitted Silver into an assisted living facility due to the fiduciary's concerns for Silver's problems with memory and which Bogle believed impacted Silver's ability to independently care for himself.

On April 24, 2018, while in the assisted living facility, Silver executed a Revocation of Power of Attorney ("Revocation"). This was done with the assistance of Silver's friends/neighbors, Ashby, and Gordon Klofstad ("Klofstad"). The document was notarized by neighbor, Byfield. On that same date, Ashby presented those documents to Bogle and/or his staff at his office. Bogle rejected the executed Revocation citing Silver's incapacity to execute the Revocation.

Numerous individuals, including neighbors, friends and acquaintances of Silver, filed separate Complaints with the Division (Complaint Nos. 18-0007 through 18-0031). Generally, those complaints relayed concerns that Silver got involved with a fiduciary who had removed Silver from his home and placed him into a secured living facility against his wishes and contrary to his needs. Although the Complainants relayed varying familiarity and relations with Silver, individually and collectively, the Complainants expressed concern about what had occurred with Silver and they believed that he was capable of independent decision-making and that he should not have been placed into a facility in which he did not want to live and could not leave on his own accord.

Those Complainants with more personal knowledge of Silver told Division staff that he was experiencing problems with his memory and executive functioning including failing to pay his bills or filing his income taxes. Complainants said they thought that Silver would benefit from some level of personal care and assistance.

This Investigation Summary presents the facts of the investigation in this single report but serves to address Complaint Numbers 18-0007 through 18-0031. As part of the investigation, numerous individuals were interviewed, listed in the Persons Interviewed section of this Investigation Summary. The following is a summary of some of the interviews conducted.

#### Pamela Byfield

Byfield was the initial Complainant in Complaint No. 18-0007. She said she is a resident of Venture Out, works in the administrative office, and serves as a licensed notary as needed. Byfield said she has known Silver for several years and said he is a "snow bird"

who winters in Arizona but otherwise resides in Colorado Springs, CO. Byfield said she generally sees Silver around the complex and speaks with him approximately three (3) times per month and whenever he would come into the office to chat. Byfield said Silver was quite active in the complex and routinely played pickle ball. She stated that she has not seen any decline in Silver's functionality since she has known him.

Byfield said that on April 24, 2018, Silver's good friend, Ashby, asked if Byfield would accompany Ashby and another friend, Klofstad, to the assisted living facility where Silver was placed by the fiduciary so that Byfield could notarize a document for Silver. Byfield said Ashby told her Silver wanted to leave the assisted living facility, but the fiduciary would not allow him to because the fiduciary had a power of attorney, signed by Silver, although Byfield said Silver may not have fully realized what he was signing. Byfield said her understanding was that Silver did not initially want to sign the power of attorney but that he felt pressured to do so by the fiduciary's office. She said Silver wanted help with paying his bills because someone told him he should get assistance with this and he was given the fiduciary's contact information.

Byfield said she accompanied Ashby and Klofstad to the assisted living facility and found Silver waiting for them in his room. Byfield said she spoke with Silver and she did not think that there was any problem with his functioning nor did he present to her in any way that raised any concern. She said that Silver showers independently and he was able to readily retrieve his driver's license from his wallet, answer her questions, had knowledge of which facility he was in and the addresses of his Colorado and Arizona properties. She said that Silver indicated that he wanted to get out of the facility but could not leave because the fiduciary has power of attorney and will not release him.

Byfield stated that Silver knew he was executing a revocation of those powers of attorney and that he understood "what was going on" and she opined that Silver could revoke the powers of attorney. She said Silver told her that the fiduciary had cancelled Silver's flight home to Colorado.

#### Karen Ashby

Ashby said she has known Silver for approximately 10 (ten) years and said that he has been at Venture Out for about 18 (eighteen) years. She said that Silver resides Colorado where he lives alone in a condominium and he winters in Arizona for about six (6) months of the year. She said Silver is "careful" that he stays in Arizona for six (6) months then returns to Colorado.

Ashby said she believes that Silver requires care and that he would benefit from being in a care facility or from having someone come into his home to check on him, pay his bills, ensure his laundry and dishes are done, and ensure that completes his hygiene. She said that Silver was having problems paying bills and got behind on his income taxes. He told her that he needed "a keeper to pay my bills." Ashby said Silver started having problems with his memory and about a year ago she noticed that he was struggling to remember words and that this annoyed him. She said that neighbor/friend, Mitzi Poff ("Poff"), noticed

a bit of a decline in Silver whenever he would return to Arizona from Colorado. Ashby said Silver was readily able to converse and he never forget any of his friends or addresses nor did he get lost. She said he was active and played pickleball. Ashby said she was aware that Silver's physician had increased the medication for "moderate" dementia in November last year. Ashby said that approximately a year and a half ago Silver had a stroke.

Regarding EVFS' involvement, Ashby said she understood that Silver got some type of notice in the mail and he thought he should get help paying his bills, so he called the fiduciary and they "set up the paperwork" and brought in a notary. Ashby said that Silver told her he read over the documents the fiduciary's office prepared for him and that he "didn't like it at all, but they kept going" so he finally signed the documents. She did not believe that Silver realized the "depth" of what he was signing and thought that the fiduciary was just going to pay his bills for him.

Ashby said she used her phone to record Silver signing the revocation of the powers of attorney. After he executed the revocation, Ashby said she took the document to Bogle's office imploring him to let Silver go because he did not need to be at this assisted living facility. She said that Bogle came out of the back room and told her that they had a doctor's report saying Silver was "incompetent" therefore the revocation "had no power...no worth," according to Ashby. She said that Bogle told her that she had to leave and that if she did not, he would call the police, so she left the premises. Ashby said she wondered how Silver could "go downhill in 77 days." She believed that if Silver was to be in an assisted living facility he should be in one with a ping-pong table, so he can get active because he is sitting around watching television and sleeping.

#### Gordon Klofstad

Klofstad said he knows Silver but "not real closely" because there are approximately 3000 (three thousand) people living in Venture Out during peak season. Klofstad has been residing at the complex, seasonably, for approximately 16 (sixteen) years and said he has known Silver since he has resided there although "not very well." Klofstad said they are involved socially with many activities at the complex and Silver attends some of those activities and events. Klofstad said Silver is "very open with me" when they speak. Klofstad said he did not interact with Silver often but would about "half a dozen times a year."

Klofstad stated that he has never had any concerns for Silver. Klofstad said Byfield and Ashby asked him to accompany them to see Silver because they intended to have the power of attorney revoked. Klofstad said that Silver was expecting them and Klofstad spoke with Silver for about a half an hour while the paperwork was being prepared. Klofstad said that Silver seemed "normal" to him. Klofstad said he did not know whether Silver initiated the request for the revocation of his powers of attorney but said that Ashby believed this was the best way to get Silver out of the assisted living facility and they were trying to help him.

Klofstad said the notary (Byfield) was brought along to “take care of everything.” He said that the revocation and what it meant was explained to Silver and Klofstad said, “I think he understood” because Silver had signed the powers of attorney in past. Klofstad said that Silver calmly commented “protect yourself” which Klofstad believed meant not to do things without knowing what you are doing. Rhetorically, Klofstad asked, “Who determines the mental condition that he needed to be removed from where he was functioning adequately?”

Klofstad opined that Silver could make decisions for himself and that Silver said he was concerned that he was trapped and unable to get out of the assisted living facility. Klofstad said Silver is vulnerable because he trusts people “a bit more than some should be trusted.” Klofstad said Silver believed it was a mistake that he signed the power of attorney and that is why he commented “protect yourself.” Klofstad stated that if Silver was of sound mind when he signed the powers of attorney documents “he’s still of sound mind today” regarding the revocation.

#### Mitzi Poff

Poff said she met Silver approximately 18 (eighteen) years ago. She said she saw him almost daily while at Venture Out. She said he winters in Arizona and lives in Colorado Springs, CO. She said that she has been talking to him about downsizing and selling his property in Colorado so that it would simplify his life and remove the responsibility of taking care of two properties, vehicles etc. She said this year Silver intended to return to Colorado and sell his condominium and vehicle, but Silver got caught up with the fiduciary’s office and they canceled his flight home.

Poff said that over the last several years she has noticed a decline in Silver’s functionality and said he has been slowing down. She said she has spoken with him a few times about getting some assistance and having someone come into his house and assist with house matters and paying bills etc. She said he has been letting his bills stack up and he has not been doing well at writing out checks. Poff also noted changes in Silver over the last few years in that his personal hygiene was “beginning to slack” and said his shirts or shorts looked “grody.” She said she would tell him to go home and change his shirt or shorts then come back. Poff also described Silver as having a little difficulty with hearing conversation and he would hesitate, then engage, but he would be talking about something unrelated to the topic of conversation. She said that Silver was very good with directions and he never got lost. Once during a lunch outing at his favorite Chinese buffet, she took a different route than the normal and Silver noticed and questioned her about the route change.

Poff said that Silver was very active at Venture Out and he frequently played pickleball and was an avid table tennis player. She said he was living free and was active but now his placement at the facility amounts to Silver being “locked up behind closed doors...basically in jail.” Poff said that Silver wants out of the assisted living facility and said he is feeling very upset and angry with himself apparently stating, “because I’ve done this to myself. I sat there and signed my life away. They kept putting papers in front of me and I kept signing. I wasn’t looking at what they were giving me or anything. I signed

myself away.” Poff said that when Silver told her that he “signed up” with a fiduciary, she was not certain that he even knew what a fiduciary was. He said that they were “financial people that will help me catch my bills up and help me manage that part of my life.”

Poff said that the fiduciary cancelled Silver’s ticket to return to Colorado and told him that he could not leave because a doctor did not want him to leave. Poff said that Silver has been using Ashby to book his airline tickets online for several years. After being told he could not leave, Poff said Silver asked Ashby to book the tickets using her own credit card and he went to his bank and withdrew \$500.00 to pay her cash because he still wanted to go.

Poff opined that Silver can function at his own home with support services in place. She said he needs someone to check in, make sure his medications are in the proper place, clothes are cleaned, and house picked up. She said that with support there is “not a doubt” that he would be fine living at home and to “be out with people again.” Poff said that Ashby spoke to Silver about getting him in-home support and whether he would agree to pay for those services. Poff said Silver agreed to pay and apparently commented, “It’s got to be cheaper than what this place is costing me. Of course, I would.” Poff said she did not doubt Silver’s ability to pay for services given his resources.

#### Michael Bogle and Tanya Malos

Bogle said that his office was referred to Silver by Arizona Palliative Home Care (“Palliative Care”) on January 8, 2018. The agency was providing services to Silver at his home. Malos said that Silver’s primary care physician had contacted the insurance company and the support service was provided to Silver. She said the physician was concerned that Silver was not getting the health care he needed and was not taking his medication. Malos said the agency’s social worker was concerned that their services were not enough so EVFS office manager, Judy Bates (“Bates”) went out to see Silver and further gather information.

Malos said she was assigned the case and she and Bates went to Silver’s home to meet with him and further assess his needs. Malos said, specifically, Silver wanted help with managing his finances and getting to his medical appointments because he was not remembering his appointments. She said that Silver commented that one day he was going to burn the place down because he was cooking and forgot items on the stove causing a small fire and that, apparently, it almost happened again the last week. She said he was managing his medication and using Medi-sets for his pills but when she checked it she found that he had them “semi set up” but he was not taking the medication. Malos said Silver was aware that he was not doing it right and said that sometimes he forgets the dose or doubles up on the dose. She said that Silver was a former pharmacist and that, except one medication, he was unable to tell her what medications he was taking.

Regarding the condition of Silver’s home and person, Malos said that his hygiene was “lacking” but she did not notice any body odor at that meeting although she did in subsequent meetings. She said after EVFS got involved and started taking Silver to his

medical appointments, his biweekly checks showed his levels are “way out of whack” because he was not taking enough or was taking too much. Malos said, at times, Silver’s memory was better than at other times and as she got to know him she found that he was most reliable earlier in the day than in the afternoon. Malos said that after EVFS became agent under the powers of attorney documents, medical records were requested, and EVFS discovered that Silver had been given a diagnosis although he denied every getting any such diagnosis.

Regarding the powers of attorney documents, Bogle said his staff was reporting back to him that “there were real concerns with his [Silver’s] care and his finances and my concern is that we didn’t have authority to act...in order to get that authority we felt that had to be either a protective order like a guardianship or conservatorship or an actual power of attorney, if he had the capacity to do that.” Bogle said they reached out to attorney, Brian Taylor, and asked him to meet with Silver to determine if it would be appropriate to prepare estate planning documents because Silver wanted EVFS to act “and has been very clear about that.” Bogle said that his office met with Silver three (3) or four (4) times prior to Silver signing the powers of attorney. Malos added that Silver was calling EVFS saying that creditors were calling and harassing him daily because he was not paying his bills.

Bogle was asked whether he thought that a guardianship or conservatorship was appropriate at that time to which he replied, “It’s always a concern because we don’t know all of the relationships that he has....we felt, in this case, that Norm could make these types of decisions and integrate our services in a way that a power of attorney would meet those needs, verses a guardianship or conservatorship.” Bogle stated that the costs of a guardianship or conservatorship “could prohibit us from even entering a case.” Bogle said EVFS started with a service agreement with Silver prior to the power of attorney document because it was the least restrictive approach but said, “that rapidly changed as he was calling for more requests.”

Malos stated that EVFS obtained Silver’s medical records in late March or early April 2018 and medical records from Colorado in early May 2018. She described a “very rapid” decline in Silver between early January 2018 when she first met him to end of late March or early April 2018. Asked what caused the rapid decline described, Malos said Dr. Jarvina, Silver’s physician, said that it was a natural progression of the disease and that the condition affects people differently. Malos said she went to visit Silver around that time and he was unable to remember if he had eaten that day. She said she checked his medication and saw he had missed three (3) out of five (5) days.

Regarding decisions involving Silver’s living arrangements, Bogle said he believed that he needed to be involved personally because EVFS’ standard is “for the client to be in their home. That’s the least restrictive environment with the proper care.” Malos said she contacted a home care agency because she wanted someone to oversee Silver’s medication management and to help prepare meals. The agency went out and assessed further but Malo said that Silver was even unwilling to allow EVFS to “clean up his medications.” Malos said Silver had things that had expired 30 (thirty) years but would not allow them to take it out and the agency declined providing services.



Bogle said EVFS received notice that Silver had a plane ticket to go to Colorado which Bogle said, "raised all sorts of concerns because we felt like we had been able to establish a relationship with the power of attorney and really provide the type of oversight." He said that as EVFS brought in care givers, Silvers started pushing back and the level of care that Bogle thought was appropriate was not in place.

Bogle said he met with Silver on April 12, 2018, because Silver was concerned about how his money was being spent so Bogle prepared a transaction report showing the line by line expenses. Bogle said he met with Silver to review the financial report but also to discuss appropriate level of care so that Silver could stay in his home. Bogle said Silver acknowledged that he needed help but said he did not know what was going on financially, so Bogle went through the transaction report line by line and reviewed Dr. Jarvina's report with Silver.

Despite being regularly updated by Malos on Silver's functionality since EVFS began its involvement in January 2018, Bogle said he did not actually meet Silver until April 12, 2018. After Silver called Bogle's office requesting a meeting to review his finances and how money was being spent, Bogle said EVFS now had a physician's report and had "tangible information we could share with him." Bogle said he wanted to meet Silver to "see if he specifically understood these things." At the end of his review with Silver, Bogle said, "it was clear that he was not able to...a non-professional going and having a discussion with him could appear as though he knew what he was talking about and could explain the situation...so for me now I recognized that there was that cognitive dysfunction and that he truly needed that additional level of care."

Bogle said that Silver understood the concerns and repeated "I know I need some help" but he did not specifically answer questions Bogle was asking, for example, about driving. Bogle said because Silver was unable to follow the financial information, that is when Bogle realized that "there's a real concern he because he's vulnerable." Bogle said he was surprised at the extent of difficulty Silver was having with identifying a check, date etc. Bogle said Silver said he was seeing tens of thousands of dollars in transactions but that was not the case, although Bogle said that the transaction report covered January through March and the fiduciary fees were approximately \$10,000.00. In addition to discussing the medical report with Silver, Bogle said he also talked to him about the plane ticket to Colorado "and how we weren't comfortable with that because the concern then is that we would be unable to manage the issue we're already trying to identify."

Bogle commented on Silver's home environment, stating that the residence had numerous stairs and Bogle said he knew Silver had previously fallen in March 2018. Malos said the night before she visited him in March, Silver had fallen but he said, "no big deal, I'm okay..." When she saw him the following day, she noticed "bruises and injuries from a fall." but Silver specifically denied hitting his head when she asked him. Bogle said that during his visit with Silver, she saw scabs on his knee, a bruise on his arm and face and said, "it looked like he was healing properly, it didn't look like there was a major infection or anything like that." Asked if Silver was taken to a doctor, Malos said "yes" and that he was seen by his physician for the first fall and apparently the neighbors took him after a

second fall which apparently occurred while he was playing pickleball. Malas said she called his primary doctor to follow up but there was no record that he was seen. She thought he may have been taken to urgent care but was unsure.

The Division notes that in written correspondence of August 21, 2018, regarding the Division's questions involving follow up medical care after Silver fell, Bogle stated that he did not think Silver required a doctor and said Silver did not complain of having pain and he did not to see a physician. Bogle asked Malos to follow up the following day to check on Silver. Apparently, Malos noted that the bruise on Silver's face was evident but fading.

Malos said that she talked to Silver about him going into an assisted living facility and said he agreed that he should go so she set up two onsite visits. On the day of one visit, Silver told her that he did not want to go.

Bogle and Malos were asked whether Dr. Jarvina was aware that Silver executed powers of attorney documents and/or whether the physician had any concerns, Malos said that the physician was aware and that he did not express any concerns.

Bogle stated that after meeting Silver in April 2018 and, based on Dr. Jarvina's recommendation that Silver would not be safe living alone, Bogle said EVFS had three (3) options:

- 1) Silver stays at home with in-home care but that was cost-prohibitive at approximately \$3,900.00 per week.
- 2) Respite where Silver would leave his home for a week or two and go to respite until his medication was stabilized.
- 3) Move Silver into an assisted living facility where he would have all his needs taken care at considerable less cost than in-home care.

Regarding Silver's revocation of the powers of attorney on or about April 24, 2018, Bogle said that two of Silver's friends/neighbors presented Bogle with a revocation of EVFS' authority under the powers of attorney. Bogle stated, "We wouldn't honor that based on what we had learned in the powers of attorney and the doctor's report" and said the neighbors were very upset about that and said this would not be the end of this issue and left the building. Asked what concerns Bogle had with the revocation, he said, "my concern was at that point after meeting him personally that he didn't have the ability to revoke that authority."

Bogle said had discussions with his attorney about specific options should Silver revoke the powers of attorney and they discussed a guardianship/conservatorship so that would involve court appointed counsel; a hearing where all facts are presented, and people express their views; and adjudication about capacity by a judge, but Bogle did not pursue such action through the court. When asked if he believed, under the circumstances, that the powers of attorney documents would suffice to keep Bogle in a decision-making capacity for Silver, Bogle stated, "We do, and we feel it is most cost-effective."

### Erin Waters

Waters, a Social Worker with Arizona Palliative Care, said that her agency was referred by Silver's insurance company to provide in-home support services. Palliative Care was involved from December 2017 to March or April 2018. She said that Palliative Care got referred because Silver was not managing well at home and was not taking his medication or following up with medical appointments.

Waters said she met with Silver and he identified a need to have someone help him manage his money. Apparently, a friend of his was helping him with paying his bills but the friend died several months prior. Waters said she explained, generally, the role of a fiduciary and she provided Silver with a listing of county or state licensed fiduciaries. She said that Silvers selected EVFS based on proximity to his home. She said she was present when Silver called EVFS to schedule an appointment adding everything she did was done at Silver's request. Waters said she was present when EVFS' Bates came to Silver's home for the initial appointment. Waters said the meeting was set up with EVFS specifically for Silver's financial management issues because that was the area with which he had problems. Waters said that Silver understood what the fiduciary's office was doing.

With respect to functionality, Waters said Silver was not taking his medication and he was unable to retain any of the education Palliative Care provided him and he required a lot of repetitive information. She said she believed that Silver was able to comprehend information but had problems with recall. She said that Silver told her that he was driving his car but that he got lost while driving. During another meeting with Silver at his home, Waters said he showed her his toe which appeared black due to infection. Waters contacted Bogle's office and they took Silver to his doctor because Silver was not taking his medication and was not following up on medical appointments.

Waters was asked her opinion, based on her direct experience, whether she thought Silver was capable of understanding and executing powers of attorney if any were presented to him. Water replied, "I think he would have been, yes. He's very, very smart. He could tell you that he's not paying bills, that he has past due bills, but when it comes to actually calling and the more complex issues, he definitely needed assistance with that." She said she was not aware of any powers of attorney documents that had been signed. Conversely, Waters stated that she could not provide "a good clear answer" when asked her opinion as to whether Silver could appropriately execute a revocation of powers of attorney. She said there were many aspects that could have clouded Silver's judgement including his friends and neighbors.

Waters said that Silvers commented he did not like living in the assisted living facility but acknowledged that they took good care of him there. She said Silver commented that his friends did not think he should be there and they would visit him and get him upset because they wanted to take him back home. Waters said that when she first met him Silver did not want to move anywhere. She thought that an appropriate placement may be assisted living or memory care.

#### Joyce Chancellor

Adult Protective Services investigator, Chancellor, said she did not have any contact with the fiduciary. She said she got involved with Silver in December 2017 and APS closed the case on February 24, 2018. She saw Silver on December 8, 2017, January 20, 2018, and February 24, 2018, at his home. She said that APS knew he had Palliative Care in his home and had established weekly care at home which included nursing care and assistance with transporting. Chancellor said that Silver is a "snow bird" who resides in Colorado and winters in Arizona. She said she found him to be "high functioning" and said he can perform his activities of daily living. Chancellor said that Silver acknowledged having problems with his memory including forgetting to take his medication, getting "turned around while driving" and some general disorientation. She declined offering any opinion on whether Silver was capable of understanding and executing powers of attorney documents and deferred this Investigator to any capacity related questions to a qualified medical practitioner.

Chancellor provided a diagnosis from his medical records. She added that during a visit Silver was dealing with a cable service guy and he dealt with all the cable related issues, so he seemed capable of doing that. Chancellor stated that she did not see any changes in Silver from December 2017 to February 24, 2018.

#### Mine Tugba Ferrari and Stephanie Olson

Ferrari is the new Executive Director of Brookdale East Harbor and Olsen is the Sales Manager. Ferrari was not the Executive Director in April 2018 when Silver was admitted to the facility. She said that Silver has been doing well at the facility and thinks that the fiduciary has been very responsive to his needs.

Olsen said that the fiduciary came to her "in a panic" because Silver had fallen while playing pickleball and there was concern for his confusion. Olsen and the previous Executive Director went to Silver's home to assess him and found that he was very confused and "couldn't piece anything together." Olsen said, initially, Silver complained about living at the facility and wanted to leave but Olsen said he has stopped making those statements and has settled in well. Olsen described Silver as being "lucid" on some days and as being "very lucid" on other days. She said she does not believe that he could have the capacity to sign documents.

Ferrari and Olsen noted that EVFS' Malos visits Silver weekly and she takes him to his medical appointments. Ferrari said that there are no restrictions on any visitors and Silver's friends and neighbors freely come by and take him out so that he can play pickleball or they take him out for lunch. Ferrari and Olsen denied that Silver returns from his outings in a negative mood.

Neither said they have heard Silver talk about wanting to revoke his powers of attorney. Olsen said she that shortly after Silver arrived at the facility, friends took him out for some

“paperwork” and tried to get him out of his powers of attorney so, at that time, the fiduciary placed limits on who could take him out.

Division staff notes that although Ferrari and Olsen stated that Silver has not complained about wanting to leave the facility and that he only did so initially after arriving at the facility in April 2018, while Ferrari was accompanying Division staff to Silver’s room, Division staff heard him talking to her about not wanting to stay there and that they were keeping him there. This occurred prior to Silver being introduced to Division staff.

#### Norman Silver

Silver told Division staff that he wanted to leave the facility stating, “they got me in jail” and said they were keeping him from being home. He said his home is approximately one mile from the facility. Silver commented that he has been at this facility for about six months and claimed that the fiduciary’s office told him he could be there for two weeks and could leave if he did not like the place. Silver said he told them that he did not want to live there.

Silver acknowledged having problems with his finances and paying his bills. He also said that he started having problems with driving and recognized that he likely should not continue to drive because he got disoriented and alluded to almost getting into some type of accident.

Regarding powers of attorney, Silver was asked about his understanding of having a power of attorney. He said it was “someone who can act for me and explain things legally” adding that he “probably” signed one in January. Silver stated, “I shouldn’t have signed it” because he said he did not have a lawyer present at the time he signed the document but remarked that the fiduciary “will probably say I did.” Silver said the fiduciary was to take money and put it into an account and said, “I hired them to do that” and to keep him current on his bills because he was falling behind. Silver said, “I signed the paper without a fight” and that he “gave it all away when I signed those papers” and said he did not know what he was signing.

Silver also commented that he is being held at this facility “without a criminal charge or court order” and said he blames himself for being in this position because of the documents he signed. Regarding a revocation of powers of attorney, Silver commented that revoking those powers meant that “this would all go away.”

Silver said he gets weekly visits from his friends and they take him to Venture Out to play pickleball or to take him for lunch. He said he enjoys his visits and outings. Silver complained that many of the residents are not physically active and that there is not much to do at this facility.

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## ANALYSIS OF ALLEGATIONS:

*Allegation 1: Michael Bogle and East Valley Fiduciary Services, Inc. rejected the Revocation of Power of Attorney executed by his client and continued to act on his client's behalf.*

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a), and (k)(6), and (8):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*k. Engaged in unprofessional conduct, including:*

*(6) Failed to practice competently by use of unsafe or unacceptable practices;*

*(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;*

*ACJA §7-202(J)(7):*

*7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.*

*ACJA §7-202(J)(2) and (3)(a) and (b):*

*2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.*

*3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.*

*a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.*

*b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.*

A.R.S. § 14-5506. Powers of attorney; intimidation; deception; definitions

*D. For the purposes of this section:*

*1. "Capacity" means that at the time the power of attorney was executed the principal was capable of understanding in a reasonable manner the nature and effect of the act of executing and granting the power of attorney.*

A.R.S. § 36-3223. Agents; powers and duties; removal; responsibility; fiduciaries

*A. The individual designated in a health care power of attorney to make health care decisions is an agent entitled to make and communicate these decisions while the principal is unable to do so.*

*B. An agent's authority to make health care decisions on behalf of the principal is limited only by the express language of the health care power of attorney or by court order as prescribed under section 36-3206.*

*C. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by court order.*

By all accounts, Silver was having difficulty paying his bills and he required assistance in managing his financial matters. He told friends and neighbors that he was falling behind in paying his bills and wanted help. As previously noted in this Investigation Summary, some of Silver's friends/neighbors told Division staff that they had observed a level of decline in Silver's cognition particularly with memory and recall while others also noted a level of deterioration in his attention to personal hygiene. Friends/neighbors told Division staff that they believed Silver would benefit from having supportive in-home services, assistance with bill paying and help to ensure that he took his medication and maintained his personal hygiene.

Arizona Palliative Care, an in-home support services agency, had previously been referred to Silver, to assist him with personal matters. Social Worker, Waters, told Division staff that she thought Silver would benefit from the services of a fiduciary specifically to help Silver with financial matters. Waters also said that Silver was not taking his medication or following up with medical appointments. After discussing those issues with Silver and with his agreement, Waters helped Silver to contact EFVS and the two met with EVFS staff, Bates in January 2018.

Silver executed certain powers of attorney documents on or about January 24, 2018, appointing EVFS as his lawful attorney-in-fact. As previously stated in this Investigation Summary, due to the concerns identified by Bogle and Malos, Bogle and EVFS, acting as agent for Silver under the authority of the Health Care Power of Attorney, moved Silver from his home at Venture Out to Brookdale East Arbor Assisted Living facility on or about April 17, 2018.

Bogle and EVFS rejected Silver's Revocation citing Silver's lack of requisite capacity to execute the Revocation. Bogle does not dispute that he rejected Silver's Revocation when Ashby presented it to him on or about April 24, 2018. Notwithstanding the Revocation, Bogle and EVFS have continued to act as agent on Silver's behalf under those powers of attorney. Bogle told Division staff that he based his decision that Silver lacked sufficient testamentary capacity and that he was incapacitated on certain medical records. Bogle provided Division staff the documentation and medical records upon which he said he relied.

Division staff reviewed the medical records furnished by Bogle and EVFS. Dr. Jarvina's "Physician's Report" of April 11, 2018 provided a diagnosis for Silver and indicated that he had difficulties "limiting" his ability to pay bills, perform self-help skills, live independently, take medications appropriately, and make appropriate judgements that will protect him personally, physically, or financially. In that report, Dr. Jarvina also noted that while he did not believe that Silver could improve within six (6) months to one (1) year, Dr. Jarvina believed that there was "a reason for the Court to review this matter again within six (6) months to one [sic] year."

None of the medical reports and documentation Bogle and his office provided addressed the issue of testamentary capacity.

On September 27, 2018, the Division sent Bogle and EVFS a letter, in part, verifying the specific documents Bogle said he relied upon regarding Silver's lack of competency to revoke the powers of attorney. The said letter also referred Bogle and EVFS to Court of Appeals case, *Golleher v. Horton*, regarding the Court's review of powers of attorney and mental competency.

*Golleher v. Horton. 148 Ariz. 537, 715 P.2d 1225 (Ct. App. 1985)*

*"In Arizona there is a presumption of competency which continues despite a subsequent period of incompetency since such persons may have lucid interval. See Estate of Silva. 105 Ariz. 243, 247, 462 P.2d 792, 796 (1969)."*

On October 11, 2018, Division staff interviewed Silver at Brookdale East Arbor assisted living facility. Silver told Division staff that he agreed to go into the assisted living facility for two weeks as a trial period to see if he liked the facility. After two weeks he said he did not want to live there and wanted out but said the fiduciary would not allow him to leave the facility. Silver expressed regret over initially signing the powers of attorney documents on January 24, 2018 and he seemed to understand the basis for executing those



documents. Silver acknowledged that he required assistance with paying his bills and he said he thought that signing the powers of attorney would allow the fiduciary to help Silver “keep up” with bill paying and take care of those types of matters. Silver stated that he blamed himself for getting into his current predicament by “signing my life away” to EFVS. He also made statements of regret for not having his own attorney present when he initially signed the documents. In addition, Silver appeared to demonstrate testamentary capacity to execute a Revocation when he told Division staff that by executing a Revocation, “all of this goes away.” Silver recognized that he had problems with memory and self-reported that he should not be driving a motor vehicle.

After receiving the Division’s September 27, 2018 letter, referenced earlier in this analysis, Bogle’s office brought Silver to Dr. Gwen Levitt for further medical evaluation. Bogle provided the Division with a copy of Dr. Levitt’s “Medical Professional’s Report,” dated October 17, 2018. Dr. Levitt’s report provided a diagnosis for Silver, noted issues with cognition and executive functioning as well as other medical matters, and commented on Silver’s functionality and impairments. Dr. Levitt offered recommendations for a psychiatric evaluation, medication management, and noted assisted living as an appropriate environment for Silver. Dr. Levitt did not comment on Silver’s testamentary capacity.

In a follow up interview with Bogle on December 12, 2018, he told Division staff that although he rejected Silver’s executed Revocation presented to Bogle by Ashby on or about April 24, 2018, Bogle did not meet with Silver to assess testamentary capacity nor did Bogle or his office have Silver medically evaluated to determine whether Silver had such capacity. Bogle and EVFS continued to act on Silver’s behalf under the powers of attorney signed in January 2018. In that meeting, Bogle informed Division staff that EVFS had recently filed a petition with the court seeking appointment as guardian for Silver.

Court records demonstrated that on November 13, 2018, EFVS, by and through counsel, filed a PETITION FOR APPOINTMENT OF AN ADULT.

Allegation 2 addresses issues related to the Division’s concerns regarding EVFS’ petition for guardianship.

Court records showed that on December 28, 2018, by and through counsel, EVFS filed a STIPULATED MOTION TO CONTINUE HEARING SET FOR JANUARY 2, 2019.

Subsection 3 [italics added]:

3. *NORMAN SILVER has informed his Counsel and EAST VALLEY FIDUCIARY SERVICES, INC., that he wishes to make amendments to his Estate Plan. An appointment is scheduled with Dr. Gwen Levitt, DO, for January 9, 2019, to determine if Mr. SILVER has testamentary capacity to make changes to his Estate Plan.*

In her Medical Professional’s Report, dated January 9, 2019, Dr. Levitt, wrote, pertinently [italics added]:

*1. Mr. Siler does have the capacity to designate his beneficiary of his will.*

The issue to be resolved in Allegation 1 is whether Bogle and EVFS acted prudently and in accordance with prevailing and acceptable standards of professional fiduciary practice, as required by ACJA §7-201(H)(6) and (8), in context of Silver's testamentary capacity.

The Division contends that the fiduciary's conduct in this matter was not consistent with careful, responsible and acceptable standards of practice. Bogle accepted that Silver had the requisite capacity to execute powers of attorney documents on or about January 24, 2018, but Bogle rejected Silver's Revocation of those powers on or about April 24, 2018 citing Silver's incapacitation and Bogle and EVFS continued to act on Silver's behalf under those powers of attorney.

Bogle told Division staff that he did not meet with Silver after Bogle became aware of the Revocation nor did his office take Silver for further evaluation to determine whether Silver had testamentary capacity. It was not until January 9, 2019, that Bogle and EFVS had Silver evaluated by Dr. Levitt for testamentary capacity and, pursuant to Dr. Levitt's report of the same date, she wrote, in part, that "Mr. Silver does have the capacity to designate his beneficiary of his will."

The Division contends that if Silver had testamentary capacity to change his Estate Plan and designate his beneficiary of his will, as noted by Dr. Levitt, then Silver likely had the requisite capacity to execute the Revocation in April 2018.

Pursuant to A.R.S. § 36-3223(C):

C. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by court order.

By rejecting Silver's Revocation, Bogle and EVFS exceeded the authority granted by the powers of attorney and overruled Silver's desire and intent to terminate EFVS from acting as his agent. Moreover, by not timely having Silver assessed to determine whether he had testamentary capacity, Bogle and EFVS failed to "exercise extreme care and diligence when making decisions on behalf of a ward" or to "make all decisions in a manner that promotes the civil rights and liberties of the ward or protected persons and maximizes independence and self-reliance," as required by ACJA § 7-202(J)(3), Code of Conduct.

The Division recognizes that Silver has impairments in cognition and executive functioning. He most likely requires ongoing supportive care which may include residency in a suitable assisted living facility or similar supported living environment. Those decisions are within the authority and responsibility of a guardian, should the court appoint one, or by the designated agent under a valid Power of Attorney. Bogle and EVFS took protective actions by placing Silver into the assisted living facility in April 2018.

However, the issue is whether Bogle and EVFS were careful and diligent in determining if Silver had testamentary capacity when he terminated the fiduciary relationship with the

executed Revocation. Bogle admitted that he did not meet with Silver after Bogle became aware of the Revocation nor did Bogle/EVFs timely bring Silver for any further medical evaluation to gain an understanding of whether Silver had testamentary capacity. It was not until January 9, 2019 and, in part, scrutiny by the Division that Bogle and EVFS took substantive actions to assess Silver's testamentary capacity. As previously stated, Dr. Levitt determined that Silver had the requisite capacity to change his Estate Plan and designate a beneficiary of his will. By failing to timely act on the issue of testamentary capacity after Silver executed the Revocation, Bogle and EVFS failed to safeguard Silver's civil rights and liberties.

Allegation 1 is substantiated.

***Allegation 2: Michael Bogle and East Valley Fiduciary Services, Inc. filed a document with the court that contained misrepresentations or omissions of material facts, in violation of ACJA §7-202(J)(1)(c)(3).***

*ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).*

*ACJA §7-201(H)(6)(a):*

*6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:*

*a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;*

*ACJA §7-202(J)(7):*

*7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.*

*ACJA §7-202(J)(1)(a) and (c)(3):*

*1. Duty to the Court.*

*a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.*

*c. The fiduciary shall:*

*(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts; and*

During a follow up interview with Bogle on December 12, 2018, he told Division staff that EVFS had filed a petition to be appointed guardian for Silver. Bogle stated that in that petition, Bogle and his office provided the court with all pertinent facts involving Silver.

Court records demonstrated that on November 13, 2018, EFVS, by and through counsel, filed a Petition for Appointment of Guardian of an Adult, in PB2018-004308. The Division notes that this Petition did not include an appointment as Conservator and instead indicated that EVFS would continue to manage Silver's finances through the power of attorney executed on January 24, 2018. The Petition did not include information that Silver had previously executed a Revocation of Power of Attorney. The matter was set for a hearing on January 2, 2019.

On December 28, 2018 EVFS, by and through counsel, filed a Stipulated Motion to Continue Hearing Set for January 2, 2019, seeking a 30 (thirty) day continuance to allow for Silver to be assessed medically and to determine whether he has testamentary capacity to make changes to his Estate Plan.

Division staff spoke with Court-appointed counsel, Christopher Theut ("Theut"), who confirmed that he is the Court-appointed counsel for Silver. Theut said that after getting appointed as counsel in November 2018, and knowing that a hearing was set for January 2, 2019, Theut sent a letter to EVFS' counsel of record requesting documentation and records regarding Silver but Theut said he had not received any of the requested records. Theut said Silver was being evaluated medically to determine whether he had testamentary capacity because he wanted to change the beneficiary of his will and ensure his son was beneficiary of Silver's estate.

Theut stated that neither Bogle or his office nor counsel had informed Theut that Silver had previously executed a Revocation of Power of Attorney.

In response to the Division's additional allegation that Bogle/EVFS filed a document with the court that contained misrepresentations or omissions of material facts, in violation of ACJA §7-202(J)(1)(c)(3), on February 19, 2019, Charles Dyer ("Dyer"), on behalf of Bogle/EFVS, responded that EVFS remains the current agent for Silver under the Powers of Attorney executed by Silver on January 24, 2018 and that, to date, there has not been a finding by a court that has addressed the validity of the revocation or powers of attorney executed by Silver on or about April 24, 2018.

Dyer cited Dr. Jarvina's April 11, 2018 report and information contained within Dr. Levitt's October 17, 2018 report that concluded Silver was in need of a guardian and conservator.

Regarding Allegation 2 specifically, Dyer wrote, in part, that Rule 8 of Rules of Civil Procedure provides that “a pleading must contain a short and plain statement of the claim.” Dyer said that the petition filed on November 13, 2018 was to request that the court appointed EVFS as guardian and that such a petition was not for the purpose of determining the validity of the powers of attorney or revocation of the same. Dyer, on behalf of Bogle/EVFS, denied that EVFS knowingly or intentionally misrepresented or omitted material facts by not including the information regarding Silver’s “alleged revocation of the powers of attorney.”

Dyer stated that the Petition filed on November 13, 2018, contained “all the information as required by statute to be included in a petition for guardianship/conservatorship. Dyer said that due to the Division’s belief that the court should be informed of the “alleged revocation of the powers of attorney, EVFS filed an Amended Petition for Guardianship and Petition for Conservatorship” with the court on February 5, 2019 providing such details.

The Division verified that the Amended Petition was filed accordingly.

Dyer further added that the “alleged revocation of powers of attorney” were discussed in a timely manner with Theut.

EVFS’ February 19, 2019 response, indicated, in part, “To date, there has not been a finding by a court that has addressed the validity of the revocation or powers of attorney executed by Mr. Silver on or about April 24, 2018.” Further, Dyer contended that the Petition “was not for the purpose of determining the validity of the powers of attorney or revocation of the same.”

However, in the Petition filed with the court on November 13, 2018, Dyer, for EVFS, stated that the Petitioner (EVFS) is interested in this matter because it is currently acting as power of attorney, both financial and health care, for Silver; and that Silver named EVFS his power of attorney, both financial and health care, on January 24, 2018 and that EVFS has been “serving in that capacity since January 24, 2018.” With the Petition, Dyer attached copies of the Durable General Power of Attorney and Health Care Power of Attorney as Exhibit “A” and “B.”

In addition, the Petition states that EVFS “has been able to successfully act as agent for the proposed Ward, however, Mr. Silver sometimes challenges the decisions made on his behalf. The fiduciary wants to make sure that even though Mr. Silver lacks the capacity to make responsible decisions on his behalf that he is afforded the opportunity to have his voice heard by the Court and have his right to legal Counsel exercised.”

Dyer goes on to write that “Despite the valid Health Care Power of Attorney, EAST VALLEY FIDUCIARY SERVICES, INC....” And, “Currently, EAST VALLEY FIDUCIARY SERVICES, INC., does not believe there is a need for an appointment of a Conservator, and that its [sic] in the best interest of the Estate that the fiduciary continue to operate under the Durable General Power of Attorney regarding Mr. SILVER’s financial affairs.”

Notwithstanding the specific language EVFS utilized in the Petition regarding EVFS' assertions that the Powers of Attorney were current and valid, EVFS, per Dyer, responds to the Division's additional allegation that the purpose of the Petition was not for the purpose of determining the validity of the powers of attorney.

Moreover, EVFS, by and through counsel, stated that EVFS has been able to successfully act as agent for Silver and that EVFS wants to ensure that Silver is afforded the opportunity to have his voice heard by the Court. However, EVFS did not seem to believe that it was necessary to inform the court that Silver had, in fact, executed a Revocation of Power of Attorney on or about April 24, 2018.

Allegation 2 is substantiated.

**SUBMITTED BY:**

  
PASQUALE FONTANA, Investigator  
Certification and Licensing Division

  
Date

**REVIEWED BY:**

 2/25/19  
Certification and Licensing Division Date

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**DECISION OF THE PROBABLE CAUSE EVALUATOR:**

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number 18-0007 through 18-0031, the Probable Cause Evaluator:

- ☐ requests division staff to investigate further.
  - ☐ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):
-

[X] determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

# 1 and 2.

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Mike Baumstark      2/27/19

Mike Baumstark      Date  
Probable Cause Evaluator

**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
ORDER OF THE BOARD**

***CERTIFICATE  
HOLDER  
INFORMATION***

<b>Certificate Holder:</b>	Michael Bogle
<b>Certification Number:</b>	20628
<b>Business Name:</b>	East Valley Fiduciary Services, Inc.
<b>Certificate Number:</b>	20592
<b>Type of Certificate/License:</b>	Individual Fiduciary, Business Entity

**RECOMMENDATION:**

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Michael Bogle and East Valley Fiduciary Services, Inc. have committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint numbers 18-0007 through 18-0031.

It is further recommended the Board accept the terms and conditions contained in the proposed consent agreement.

**SUBMITTED BY:**

 5/5/19  
\_\_\_\_\_  
Mark Wilson, Division Director      Date  
Certification and Licensing Division

**FINAL DECISION AND ORDER:**

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint numbers 18-0007 through 18-0031 and Michael Bogle and East Valley Fiduciary Services, Inc., certificate numbers 20628 and 20592, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- ☐ requests division staff to investigate further.
- ☐ refers the complaint to another entity with jurisdiction.

Referral to: \_\_\_\_\_



- ☐ dismisses the complaint, and:
- ☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
  - ☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- ☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
- ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
  - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- ☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- ☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- ☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: \_\_\_\_\_

- ☒ adopts the recommendations of the Division Director.
- ☐ does not adopt the recommendations of the Division Director and orders:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Deborah Primock, Chair  
 Fiduciary Board

\_\_\_\_\_  
 Date